illegal business, and found within the building, yard, or enclosure where that business is carried on. This construction gives effect to all the language, because there are often many things connected with a trade or manufacture which are not properly described as either tools, implements, or instruments,—as for example fuel, fixtures, &c.

This construction entirely relieves the difficulty concerning the place or building, yard and enclosure, because it is reasonable that all things which are part of the unlawful business which are found within the same enclosure, whether inside or outside of the building, should be forfeited, and that all articles appropriate to such business which are so found, should be *primâ facie* presumed to be connected with the fraud. This interpretation makes the whole law just, harmonious, and intelligible.[1]

New trial granted.

United States Circuit Court, Eastern District of New York.

THE UNITED STATES *v.* QUANTITY OF RAGS, ETC.

The words "personal property" in section 48 of the Internal Revenue Act, forfeiting property used in illicit distilling, include all the property in the building where the still or spirits are found, whether of a nature to be used in the distillation of spirits or not.

What may be considered within the same building, yard, or enclosure.

This was an action under the 48th section of the Internal Revenue Law, to forfeit certain personal property, upon the following state of facts:—

One Young owned a brick house situated upon the part of a city lot; against the rear wall of which a stable had been formerly erected. The adjoining lot was also owned by Young, and had been covered with a wooden building having wide doors at each end constructed and used for a livery stable. The rear of both lots was enclosed together by a single fence across the two, thus forming one enclosure, from which the only access to the street for vehicles was through the livery stable; a small gate opened from the yard in the rear of the lots, and a swinging door had been constructed opening from the rear stable building to the

[1] See the next case.

brick house in front; another door opened from the side of the brick house into the livery stable. Young occupied the front brick building as a junk-shop, and leased the livery stable to one Sherman for a livery stable, and since that he leased the rear stable to other parties. It appeared that the rear doors of the livery stable were, on Thursday prior to the seizure, found fastened by a spring lock capable of being opened without a key; the snow in the rear then gave evidence of the passing of persons from the livery stable to the rear stable, and in the rear stable was an illicit still with mash in fermentation; on Friday the still was in operation; on Saturday night the officers made a descent upon the place. The lock upon the rear door of the stable was found to have been changed. The distillery was then in full operation under the care of two men both of whom fled through the swinging door into the junk-shop, and thence to the street; where one was arrested. No claim was interposed for the distillery property, but Young claimed the personal property seized in the junk-shop, and Sherman the horses, &c., seized in the livery stable. Both claimants denied any knowledge of the existence of a still in the rear stable. There was evidence that the smell of distillation in the rear building would necessarily be detected throughout the whole place. There was no evidence that either of them was interested in the still. Upon a motion to direct a verdict for the government,

BENEDICT, J., ruled that under section 48 of the Internal Revenue Law, the juxtaposition of the property proceeded against in the same place, or within the same enclosure with the illicit still, was sufficient to forfeit it; provided the owners of the property knew of the existence of the illicit still in the rear stable, and that under the evidence in the case the jury would not be warranted in finding that the existence of the illicit still was unknown to the owner of the place and the keeper of the livery stable. A verdict was accordingly directed in favor of the government.

The difficulties in the interpretation of a system of laws so entirely new in this country as the Internal Revenue Acts, are very strikingly shown in the two foregoing cases, in which two courts of equal authority, each composed of a judge of great learning and experience, have come to precisely opposite conclusions upon one of the most important sections in the law.

The language of the Act of 1864 is, "all tools, implements, instruments,

and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles . . . . shall be found."

It will be observed that, although it was not proved by the testimony in the last case, Sherman or Young were interested in, or knew of the existence of the still, except from surrounding circumstances, the court held the personal property in the buildings, which included horses, carriages, harness, &c., in the stable belonging to Sherman, and the property in the junk-shop belonging to Young, were forfeited. In other words, the juxtaposition and the suspicious circumstances of the property proceeded against within the adjoining buildings to the still, were sufficient to forfeit it. No doubt appears to have been suggested as to the propriety of extending the forfeiture to goods not in their nature adapted to the unlawful manufacture, and the attention of the court was directed chiefly, if not entirely, to the extent of *space* covered by the words "*in the place or building, or within any yard or enclosure,*" &c. The expression of the act "all . . . . personal property whatsoever," taken literally, would certainly include the horses in the livery stable as well as the property in the junk-shop, but the court would seem to have given a very liberal construction to so severe and penal an act, in holding that the stable and shop, under the circumstances, were included "in the place or building, or within the yard or enclosure." On the other hand, the District Court in Massachusetts, by taking the words "all personal property" as merely *in pari materia* with tools and implements capable of being used in the illegal manufacture, has essentially reduced the severity of the act, and perhaps in practice may be found to have materially impaired its efficiency. The different points to which the attention of the two courts was directed may fairly account for the difference of construction, but the section itself is too important, and the interests involved too large, to be long without an authoritative exposition, and we presume a case will shortly find its way to the Supreme Court, the ultimate tribunal to set the matter at rest. J. F. B.

District Court of the United States, Northern District of Georgia.

MATTER OF JONATHAN J. MILNER, A BANKRUPT.

A promissory note, the consideration of which was a loan of Confederate money, is not provable as a claim in bankruptcy against the maker.

Per ERSKINE, J.: Confederate treasury notes were not bills of credit within the prohibition of the Constitution of the United States; but were illegal, because issued by a pretended and revolutionary government set up within the limits of the United States.

IN 1863 John Neal loaned $2500, in "Confederate treasury notes," to Milner, the bankrupt, for which amount he made his promissory note to Neal. Subsequently, Neal gave this note to his son-in-law in trust for minor children of his daughter.